



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20546

B-177946

May 29, 1973

30982

Arga Controls  
35 East Glenarm  
Pasadena, California 91105

Attention: Mr. Arnold Raines  
President

Gentlemen:

Reference is made to your letter of April 20, 1973, and prior correspondence, protesting against the rejection of your bid under invitation for bids No. 3FP-A2-R-D20795-11-14-72, issued by the Federal Supply Service, General Services Administration.

The invitation, issued on October 12, 1972, requested bids for furnishing a quantity of electronic voltmeters and related items under items in Groups A and B. Prospective bidders were advised that delivery of the initial quantity was to be made within a 90-day period after award and that 30 days would be needed by the Government for approving the successful bidder's recommended test procedures.

Bids were opened on November 14, 1972, and your firm was the lowest bidder on the items in Groups A and B. However, a preaward survey team, composed of two members from the General Services Administration and two members of the Federal Aviation Administration, recommended that the contract not be awarded to your company because your firm could not meet the schedule for delivery of the initial quantity of 20 voltmeters (with related instruction books). This was based in part upon your production schedule which was considered to indicate that it would take 120 to 135 days for the first 20 units to be available for delivery. On the basis of the survey, the contracting officer doubted that your company had the capability to provide the equipment in a timely manner and he referred the matter to the Small Business Administration (SBA) for review under Federal Procurement Regulations 1-1.708-2(a). In a letter dated February 1, 1973, SBA declined your firm's request for a certificate of competency (COC). On April 2, 1973, GSA advised our Office that because of the urgent need for the items in Groups A and B, a contract was being awarded to the Hewlett Packard Company.

You have challenged the contracting officer's failure to find your company responsible. You have stated that the Defense Contract

[ Protest of Bid Rejection ]

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Administration Services (DCAS), Pasadena, California, is aware that you have previously performed successfully on Government contracts and that the survey team should have contacted DCAS as you had requested. However, there was no question as to your prior performance. What was involved was your approach to performance on the immediate contract. Therefore, the failure of the survey team to contact DCAS is not significant.

The SBA letter of February 1, 1973, to you stated:

\* \* \* The COC is declined because of technical capacity with the primary area of concern being the requirement to allow the government thirty days to review and approve your test procedures and the effect of this requirement on your ability to deliver twenty voltmeters ninety days after contract.

You contend that the SBA letter is erroneous in that it views your concern as only having 60 days of real production time because it considers that the test approval must precede the production instead of considering that the two periods can run concurrently. However, even if you are correct in your contention, the fact remains that the foregoing situation was cited as the "primary" and not the "only" area of concern for not issuing the COC.

We have consistently held that it is the duty of the contracting officer to determine the responsibility of a bidder. In making the determination the contracting officer is vested with a considerable degree of discretion. We will not substitute our judgment in such cases and will uphold the contracting officer's determination of responsibility unless it is shown to be arbitrary, capricious or not supported by substantial evidence. See 46 Comp. Gen. 371 (1966); 45 id. 4 (1965); 43 id. 257 (1963). Since the contracting officer had before him a preaward survey indicating that your company would not be able to perform on time, we are unable to conclude that there was an abuse of administrative discretion on his part. Further, it is not a function of our Office to review SBA determinations in such matters or to require the issuance of a COC. B-175970, July 18, 1972. In addition, we have held that the refusal of SBA to issue a COC must be regarded as persuasive with respect to the competency of the bidder, and the denial thereof is an affirmation of the contracting officer's determination of nonresponsibility. B-175970, supra.

In view of the foregoing, we cannot conclude that you were improperly denied the award of the contract. Accordingly, the protest is denied.

In your letter of April 16, 1973, you request advice as to whether GSA can legally make an award after the acceptance period has expired without re-advertising. In that regard, FPR 1-2.404-1(c) and 1-2.407-8(b)(2) provide:

(c) Should administrative difficulties be encountered after bid opening which may delay award beyond bidder's acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-advertisement.

\* \* \* \* \*

(2) \* \* \* In addition, when a protest against the making of an award is received and the contracting officer determines to withhold the award pending disposition of the protest, the bidders whose bids might become eligible for award should be requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance (with consent of sureties, if any) to avoid the need for re-advertisement.  
\* \* \*

You have stated that you have invested about \$2,000 to obtain the contract and you have inquired whether there is any procedure under which you can recover the cost. The Federal courts have recognized that bidders are entitled to have their bids considered fairly and honestly for award and that the recovery of bid preparation expenses is possible if it can be shown that bids were not so considered. See, for example, Armstrong & Armstrong, Inc. v. United States, Civil No. 2780 (E.D. Wash. 1973).

Sincerely yours,

Paul G. Dombrowski

For the Comptroller General  
of the United States